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STATE OF ALABAMA
JUDICIAL DEPARTMENT
THE SUPREME COURT OF ALABAMA

SPECIAL TERM, 1969-70

James Bukacek

7 Div. 858

v.

Pell City Farms, Inc., *et al*

Appeal from St. Clair Circuit Court, In Equity

MADDOX, JUSTICE

This is an appeal by complainant from a final decree granting the relief prayed for by the respondents in their cross-bill.

Complainant (appellant) James Bukacek filed a statutory bill to quiet title (Title 7, § 1109, *et seq.*, Code of Alabama, 1940) against the respondents (appellees) Pell City Farms, Inc., a corporation, and Fitzhugh A. Burttram, Clarence B. Kelly and Ray Wyatt. Appellant, in his amended bill, tracked out statute and alleged that he was in peaceable possession of the land, that he owned the land and that the respondents claimed, or were reputed to claim, some right, title or interest in, or lien or incumbrance on the land.

Complainant called upon the respondents to set forth and specify their title, claim, interest in, or incumbrance on the land and by what instrument the same was derived and created.

Respondents asked for and received a temporary injunction prohibiting Bukacek from committing waste and from going onto the property and then filed an answer and cross-bill alleging that Pell City Farms, Inc., was the owner of the lands described in the complaint in fee simple, free and clear of all liens

except certain mortgages held by mortgagees. Respondents specifically denied that Bukacek was in "peaceable possession." The respondents also asked that the corporation be declared the owner of the lands in question and prayed that the temporary injunction against Bukacek be made permanent.

Respondents later made a motion to strike Bukacek's jury demand, claiming that the cross-bill raised issues and independent equities which were not triable by a jury as a matter of right, the respondents arguing that the provisions of Title 7, § 1112 of the Code would not apply. The court granted the motion, struck the jury demand, and tried the case without a jury.

Upon final submission the trial court dismissed Bukacek's complaint, as amended, and decreed that "The title to said property as described in the Cross-Bill of Respondents be and is vested in the Respondents and all title, right or claim of complainant be and is divested out of him."

Bukacek says the trial court erred in granting the relief prayed for by the respondents and in striking his demand for a jury trial. He also complains of the trial court's action in the admission of certain evidence.

The essential facts are not seriously disputed. The land involved is approximately 480 acres in two tracts one 300-acre tract owned by James Bukacek and one 180-acre tract owned by Virginia Bukacek, ex-wife of James Bukacek, both located in St. Clair County. In 1964, Bukacek had difficulties with his health, forcing him in 1965 to sell the dairy business he was operating. He also was having domestic problems which culminated in a divorce.

Matters got progressively worse for Bukacek, and in the latter part of 1966 and in 1967, he was having serious financial problems. The sheriff was advertising his farm for sale to pay three judgments and costs of court. The State of Alabama held a tax claim of approximately $15,000, and a payment on a Federal

Land Bank mortgage was due. Bukacek was unable to exercise an option he held to buy the 180-acre tract owned by Virginia Bukacek. In other words, Bukacek was in serious financial difficulties. It was at this time that Bukacek went to see appellee Fitzhugh Burttram about saving "my farm."

In January, 1968, James Bukacek and the three individual respondents, Fitzhugh Burttram, Clarence B. Kelly and Ray Wyatt, entered an agreement whereby Pell City Farms, Inc., was formed. Pursuant to the agreement, Bukacek conveyed his 300-acre tract to Pell City Farms, Inc., and the corporation eventually exercised the option held by James Bukacek, and assigned to the corporation, to purchase the 180-acre tract from Virginia Bukacek. The respondents paid the judgments, the property taxes, the mortgage payment, and the corporation and the individual respondents personally assumed the $37,600 mortgage and an additional mortgage executed to complete the purchase of the 180-acre tract and pay the $15,000 state taxes (for which respondents had negotiated an extension).

One of the complainant's principal arguments here is that Pell City Farms, Inc., grantee under the deeds executed by James Bukacek and his ex-wife, Virginia Bukacek, was incapable of taking legal title because the Articles of Incorporation were not filed with the Judge of Probate as required by Title 10, § 21(11), Code of Alabama, 1940 (Recompiled, 1958). Complainant argues that prior to the filing of the Articles of Incorporation, Pell City Farms, Inc., was neither a *de jure* nor a *de facto* corporation, and therefore was incapable of taking title to the real property. Complainant's argument, while very persuasive, under the facts of this case is not convincing. The evidence clearly shows that Bukacek was one of the incorporators of Pell City Farms, Inc., that he was an officer, director, and stockholder, and that he executed the deed transferring his interest in the land to the corporation; and that he participated in the business activities of the corporation relating to the land after the Articles of Incorporation were filed in the office of the Judge of Probate on March 30, 1968.

Complainant cites no Alabama case which supports his argument. He does cite cases from other jurisdictions which hold that if the Articles of Incorporation are not filed, the corporation does not exist.

Our examination of decisions from other jurisdictions shows that the courts are not in agreement as to whether a corporation *de facto* may be created notwithstanding failure to file the articles of incorporation as required by statute. The broad view is that the failure to file the required papers prevents the organization from becoming a corporation, and in the absence of any filing of the articles of incorporation there is neither a charter nor a colorable attempt to obtain one. 18 Am. Jur. 2d, Corporations, § 74.

Assuming, without deciding, that we would subscribe to the broad view that no corporation was here formed prior to the filing of the Articles of Incorporation, we think the fact situation here presented shows that while Pell City Farms, Inc., may not have been a corporation *de jure* — or perhaps even *de facto* — insofar as the transaction here is concerned, it should be regarded practically as a corporation, being recognized as such by the parties themselves. In other words, the incidents of corporate existence may exist as between the parties by virtue of an estoppel. Thus, besides corporations *de jure* and *de facto*, there can be a recognition of a third class known as "Corporations by estoppel." Corporations by estoppel are not based upon the same principles as corporations *de facto*. The doctrine of *de facto* corporations has nothing to do with the principle of estoppel. In fact, a corporation *de facto* cannot be created by estoppel, the only effect of an estoppel being to prevent the raising of the question of the existence of a corporation.

Bukacek was one of the incorporators, he dealt with the corporation as a corporation both before and after the Articles of Incorporation were filed. Under such facts, Bukacek is estopped to deny the existence of the corporation at the time he

voluntarily executed a deed transferring property to the corporation even though the Articles of Incorporation had not been filed at that time.

Our ruling here is limited. It is based on equitable grounds which preclude the complainant here from denying corporate existence. As against the state, of course, a corporation cannot be created by agreement of the parties—the statutes make certain prerequisites—but as between themselves and in connection with their own private litigations as here involved they may, by their agreements or their conduct estop themselves from denying the fact of the existence of the corporation. We hold, therefore, that Bukacek is estopped to deny the existence of Pell City Farms, Inc., even though it may have been neither *de facto* nor *de jure* at the time he executed the deed making the corporation, *by its corporate name*, the grantee.

Appellant also claims that Title 7, § 1112, grants to him a right to a jury trial and that the trial court erred in striking his demand. Whether the trial court should have initially granted the trial by jury is now academic since we find the trial judge to have been correct in determining that the complainant was not entitled to relief on his statutory bill to quiet title.

The evidence clearly shows that the complainant here was not in "peaceable possession" as those terms are defined in our decisions. This court has repeatedly held that in order to maintain the statutory proceeding to quiet title the proof must show a peaceable possession in the complainant as distinguished from a contested, disputed or scrambling one. 16 Ala. Dig., Quieting Title, Key No. 12(9).

The evidence in this case shows affirmatively that the complainant was not in peaceable possession, and the trial court properly denied any relief to the complainant on his statutory proceeding. Having decided that, we now face the question of whether the trial court should have granted relief to the respondents on their cross-bill. We hold that the court did not commit error in this regard.

In *Chestang* v. *Tensaw Land & Timber Co.*, 273 Ala. 8, 134 So. 2d 159 (1961), we have discussed very thoroughly the power of an equity court to quiet title in the respondent when the complainant fails to make proof of peaceable possession and the proof shows the respondent has the better title and has peaceable possession. We could extend this opinion and fully discuss this point, but to do so would merely mean a restatement of the law as so ably set forth in *Chestang, supra*. We, therefore, hold the trial court did not commit error in granting the relief requested by the respondents in their cross-bill.

We have considered complainant's assignments of error 5 and 6, which deal with the admission of evidence. We have carefully reviewed the objections made and find no prejudicial error with regard to these two assignments of error.

We note that the decree of the trial court reads:

> "2. The title to said property as described in the Cross-Bill of Respondents be and is vested in the Respondents and all title, right or claim of Complainant be and is divested out of him." (Emphasis ours)

We assume the trial court intended to vest title in Pell City Farms, Inc., as prayed for by the respondents in their cross-bill. In order that the decree read properly, we hereby modify it by striking that portion of the decree above quoted and substitute in lieu thereof the following:

> "2. The title to said property as described in the Cross-Bill of Respondents be and is vested in Pell City Farms, Inc., and all title, right or claim of Complainant be and is divested out of him."

Except for the slight modification of the decree, the judgment of the trial court is due to be affirmed.

DECREE MODIFIED AND, AS MODIFIED, AFFIRMED.

Livingston, C. J., Lawson, Merrill, and Harwood, J. J. concur.

STATE OF ALABAMA
JUDICIAL DEPARTMENT
IN THE SUPREME COURT OF ALABAMA

SPECIAL TERM 1970

7th Division 858	*	
JAMES BUKACEK	*	
vs.	*	ST. CLAIR CIRCUIT COURT IN EQUITY
PELL CITY FARMS, INC., A CORPORATION, *et al*	*	

Come the parties by attorneys, and the record and matters therein assigned for errors being argued and submitted and duly examined and understood by the Court, it is considered that the final decree of the Circuit Court should be modified as is hereinafter done and as modified, there is no error.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Paragraph 2 of the final decree be stricken and that in lieu thereof, the following shall be substituted:

> "2. The title to said property as described in the cross-bill of respondents be and is vested in Pell City Farms, Inc., and all title, right or claim of the complainant be and is divested out of him."

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the decree of the Circuit Court as modified be and the same is hereby affirmed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the appellant, James Bukacek, and James T. Forstman and G. W. Nicholson, the sureties on the appeal bond, pay the costs of appeal in this Court and in the Court below.

And it appearing that said parties have waived their rights of exemption under the laws of Alabama, it is ordered that execution issue accordingly.

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IT IS ORDERED that the application for rehearing filed in this cause on July 17, 1970, is hereby overruled.

SUPREME COURT, U.S.
FILED
DEC 21 1970
E. ROBERT SEAVER, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

NO. 956

JAMES BUKACEK,

Petitioner

vs.

PELL CITY FARMS, INC., a corporation, FITZHUGH A. BURTTRAM; CLARENCE B. KELLY; and RAY WYATT,

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF FOR RESPONDENTS IN OPPOSITION

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

NO. 956

JAMES BUKACEK,

Petitioner

vs.

PELL CITY FARMS, INC., etc., et al.,

Respondents

BRIEF FOR RESPONDENTS IN OPPOSITION

TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

This brief of respondents is filed in opposition to a Petition for Writ of Certiorari to the Supreme Court of Alabama. The respondents respectfully submit that the petitioner has failed utterly in his petition to indicate in any manner wherein he raised a federal question in the courts below. Rule 23 (f), Rules of the Supreme Court of the United States, July 1, 1970.

Furthermore, even if it may be assumed that a federal constitutional question was raised, petitioner has omitted further in his petition to show wherein the Supreme Court of Alabama passed upon such federal question, or did not rest its decision denying the statutory right of trial by jury in this case upon completely adequate non-federal grounds.

QUESTIONS PRESENTED

Petitioner has presented three questions.

It is submitted these three questions can be consolidated and stated as follows:

1. Whether the Supreme Court of Alabama erred in its decision that petitioner was not entitled to a jury trial under Title 7, Section 1112, Code of Alabama, 1940 (Recompiled 1958), in contravention of the due process and equal protection clauses of the Fourteenth Amendment, United States Constitution.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

In addition to the constitutional provisions, statutes and rules set forth in the Petition for Writ of Certiorari, pp. 3 through 5, respondents would invite the attention of the Court to Rule 23(f), Rules of the Supreme Court of the United States, July 1, 1970:

> "(f) If review of the judgment of a state court is sought, the statement of the case shall also specify the stage in the proceedings in the court of first instance and in the appellate court, at which, and the manner in which, the federal questions sought to be reviewed were raised; the method of raising them (e.g., by a pleading, by request to charge and exceptions, by assignment of error); and the way in which they were passed upon by the court; such pertinent quotations of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears (e.g., ruling on exception, portion of court's charge and exception thereof, assignment of errors) as will show that the federal question was timely and properly raised so as to give this court jurisdiction to review the judgment on writ of certiorari.***"

STATEMENT OF THE CASE

The Statement of the Case appearing in the Petition for Writ of Certiorari is substantially correct as to the events that occurred. Incorrect details are not pertinent.

However, respondents do not perceive in the Statement of the Case, or thereafter, any elucidation wherein he raised any federal question of a denial of a jury trial either in the trial court or in the Alabama appellate court.

The attention of this Court is respectfully invited to the following excerpt from the opinion of the Supreme Court of Alabama:

> "Appellant also claims that Title 7, § 1112, grants to him a right to a jury trial and that the trial court erred in striking his demand. Whether the trial court should have initially granted the trial by jury is now academic since we find the trial judge to have been correct in determining that the complainant was not entitled to relief on his statutory bill to quiet title.
>
> "The evidence clearly shows that the complainant here was not in 'peaceable possession' as those terms are defined in our decisions. This court has repeatedly held that in order to maintain the statutory proceedings to quiet title the proof must show a peaceable possession in the complainant as distinguished from a contested, disputed or scrambling one. 16 Ala. Dig., Quieting Title, Key No. 12(9).
>
> "The evidence in this case shows affirmatively that the complainant was not in peaceable possession, and the trial court properly denied any relief to the complainant on his statutory proceeding. Having decided that, we now face the question of whether the trial court should have granted relief to the respondents on their cross-bill. We hold the court did not commit error in this regard."

This, in its entirety, is what the Supreme Court of Alabama had to say about the jury trial issue. No federal ground is mentioned, and, in fact, the court stated petitioner did not qualify or have standing to prosecute a statutory quiet title action since his possession was not peaceable!

ARGUMENT

I.

No Federal Question is Presented

Petitioner has not enlightened this Court wherein any title, right, privilege, or immunity under federal law was asserted affirmatively or defensively in the lower state tribunals, nor did the decision of the Supreme Court of Alabama pass upon any federal question.

This is a civil case commenced in the lower court of Alabama under a special statutory equitable action to quiet title. As a matter of statutory grace, and not of constitutional right, should a complainant be in actual peaceable possession of land, then he is entitled to ask for a trial by jury under the provisions of Title 7, Section 1112, Code of Alabama, 1940.

Respondents here in the lower trial court moved that court to strike the jury demand of the petitioner here, which motion was granted, and the lower trial court proceeded to hear and determine the case without a jury. It does not appear in the record that at that point the petitioner asserted any federal constitutional right to a trial by jury. This was his first opportunity to do so; this he failed to do.

Neither does it appear that in the Supreme Court of Alabama that petitioner asserted any federal constitutional right concerning the striking of his jury demand.

The Supreme Court of Alabama in its decision and opinion does not refer to any federal constitutional right; its decision quite simply says that under the circumstances of this case that petitioner was not entitled to the *statutory* right of trial by jury, such jury being provided in Title 7, Section 1112, Code of Alabama, 1940.

The decision of the Supreme Court of Alabama does no more than discuss the interpretation of this Alabama statute, without considering such interpretation in the light of a federal question properly presented to it. Thus, if it be assumed that a federal question was properly presented to

the Supreme Court of Alabama, this Court is still without jurisdiction to consider the federal points. *Beck v. Washington*, 369 U.S. 541, 549–550.

Finally, and granting to petitioner every benefit of the doubt, he has not demonstrated that the denial to him of the statutory right of trial by jury in quiet title cases was a departure from accepted Alabama procedure where he could not prove his "peaceable possession". In this posture of the matter, there could be absolutely no basis for claiming a denial of "equal protection of the laws", and, it is submitted, the decision of the Supreme Court of Alabama was based upon an entirely adequate non-federal ground. See *Herb v. Pitcairn*, 324 U.S. 117, 125–6.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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